UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

HUMAN DEVELOPMENT CENTER Employer and AFSCME COUNCIL 5, LOCAL 3558 Petitioner	Case 18-UC-416

DECISION AND ORDER

Petitioner seeks to clarify an existing bargaining unit of employees who work in Minnesota for the Human Development Center (the Employer) to include a group of employees who work in Wisconsin. Petitioner contends that with the completion of a corporate consolidation between the Employer and the Human Resources Center (hereafter HRC), clarification is appropriate. The Employer contends that the recent consolidation of it and HRC has had no substantial effect on employees' terms and conditions of employment and therefore does not justify clarifying the Wisconsin employees into the existing unit. Based on an administrative investigation, I conclude that the petition should be dismissed because there is no evidence that the recent consolidation has made a separate unit of HRC employees inappropriate.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire file in this proceeding, I find:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[1]

2. The labor organization involved claims to represent certain employees of the Employer.

The first part of this decision will be a review of the operations of both the Employer and HRC prior to the consolidation, as well as evidence of shared personnel prior to the consolidation. Second, this decision will review corporate changes connected with the consolidation that prompted this petition. Finally, this decision will analyze those changes under established Board law concerning accretions.

Operations Prior to Consolidation

The Employer's Operation

The Employer provides mental health services, including, among other things, outpatient treatment, chemical dependency and addiction treatment, case management services, and employment counseling for persons with mental health issues. The Union was certified in Case 18-RC-17028 to represent a unit of all employees, including professional employees, employed by the Employer at or out of the Employer's facilities located in Duluth, Cloquet, Two Harbors, Silver Bay, and Grand Marais, Minnesota, on September 19, 2002.

The Employer owns and operates 13 facilities in Minnesota. All of these 13 facilities employ unit employees. There are a total of about 125 unit employees. Of the

---

[1] The Employer, Human Development Center, is a Minnesota corporation with a principal office and place of business located in Duluth, Minnesota, where it is engaged in the provision of mental health services and treatment. During the past calendar year, a representative period, the Employer sold goods or services valued in excess of $50,000 directly to customers located outside the State of Minnesota, and earned gross revenues in excess of $1,000,000.

13 facilities, eight are in Duluth. The eight facilities are an administrative office at 1402 E. Second Street, which houses the executive offices, the maintenance director's office, the IT department, and billing, HR, and payroll offices; a clinic at 1401 E. First Street, which includes the main office for the psychiatry department (including the office of the medical director, an MD psychiatrist); a clinic at 1406 E. First Street, which provides employment counseling services and the "safe schools program" (the employees of which spend much time in the local schools); 1730 E. Superior Street, which offers case management for adults and a "drop-in" center; 1026 E. Superior Street, which offers "assertive community treatment," case management services, and the "crisis response team"; 31 W. First Street, which offers assertive community treatment and case management services; 315 N. Second Avenue W., which provides case management and outreach services specifically for homeless persons; and 215 N. Central Avenue, which provides psychological testing services and case management for children.

In addition to the eight facilities in Duluth, the Employer operates two facilities in Cloquet, one of which provides general therapy, case management, and rehabilitation services and one of which is a "drop-in" facility. The Employer also has one facility in Two Harbors, from which it provides general therapy and other services and employment counseling. It has one facility in Grand Marais, from which it provides general therapy services. A few employees otherwise employed in Two Harbors also work "a couple days a week" out of a rented space in Silver Bay, Minnesota, doing general therapy and case management.

Many unit employees report directly to a program director or the St. Louis County assistant program director. The rest have another direct superior between them and the directors listed above to whom they look for daily assignments and directions. In addition, those direct supervisors participate in job interviews and hiring decisions, and initiate disciplinary action.

HRC's Operation

Before the consolidation described below, HRC owned and operated three facilities in Superior, Wisconsin. From 39 – 25th Street, it offered psychiatric services and therapy and chemical dependency outpatient services. At 1212 Faxon Street, it operated a group home for adults with mental illness. The Community Service Center (CSC) at 1500 N. 34th Street offered chemical dependency inpatient services. CSC and the group home required 24-hour residential staff. These facilities employed (and continue to employ) about 60 rank-and-file employees, none of whom has been represented by Petitioner. These 60 employees were supervised by individuals different from the supervisors employed by the Employer.

Shared Personnel Prior to Consolidation

At the time of the certification, the Employer shared upper management with HRC, a Wisconsin corporation. HRC initially "hired" the Employer to provide an executive director in about 1997, and by the Union's certification in 2002, HRC was also using the Employer's human resources department and had adopted the Employer's board of directors as its own.

Jim Gruba has been executive director for both companies since April 2005. Before the consolidation, Gruba had 12 "direct reports" on his organizational chart. They were the finance director, the human resources director, the IT director, the facilities director, the medical director, the community relations director, the health information director, four program directors (one for the three Wisconsin facilities; one for St. Louis County (basically Duluth), one for Carlton County (Cloquet), and one for Lake and Cook County (Two Harbors, Grand Marais, and Silver Bay) combined), and an assistant program director for St. Louis County.

In addition to sharing managers, the Employer and HRC also shared some employees prior to the consolidation. For example, since the Union's certification, IT and maintenance employees, who are all covered by Petitioner’s contract, have worked wherever needed, in Wisconsin or Minnesota. One unit maintenance employee has been "regularly" stationed at the CSC building in Wisconsin. In addition, maintenance employees all have a specialty of some sort, so, for example, the HVAC specialist has performed HVAC work wherever it is needed, whether the facility has been operated by the Employer or by HRC. Likewise IT employees have performed services for all facilities of either the Employer or HRC.

Corporate Changes Connected with the Consolidation

In late 2007, the board of directors decided to basically take HRC "out of business," without formally dissolving it as a corporation. As of January 1, 2008, they changed the name on all the property deeds so the Employer now owns everything; they changed the names on all their contracts; and they changed the name of the payor on Wisconsin employees' paychecks. Thus, while HRC still exists on paper, it no longer owns property, employs employees, or operates a business.

Coincidentally, the Employer is currently in the process of reorganizing its management structure. As of January 1, 2008, it reduced the number of direct reports to Gruba to six. It changed the finance director's title to chief financial officer and put the IT director and facilities director in that department. It created a new position called director of clinical operations, which, when filled, will stand between Gruba and the program directors and the assistant program director on the organizational chart.

Petitioner offered no evidence that these corporate changes have impacted employees in any way. For example, there is no evidence that employees transferred from a Minnesota facility to a Wisconsin facility or vice versa as a result of the consolidation or that any employees in one state acquired any new duties in the other state. There is also no evidence that day-to-day supervision or direction of any rank-and-file employees has been or will be affected by the consolidation. In fact, the administrative investigation revealed contrary evidence from the Employer on each of these points. The only change in supervision contemporaneous with the consolidation is to add a layer of management in some of the reporting lines between the front-line supervisor and the executive director.

Legal Analysis

"Unit clarification may be appropriate where an employee classification has been newly created or has undergone recent substantial changes so as to create doubt regarding whether that classification should be accreted to an existing unit." Robert Wood Johnson University Hospital, 328 NLRB 912, 914 (1999). The Board "'will not, under the guise of accretion, compel a group of employees who may constitute a separate appropriate unit, to be included in an overall unit without allowing those employees the opportunity of expressing their preference in a secret election.'" Towne Ford Sales, 270 NLRB 311 (1984), quoting Melbet Jewelry Co., 180 NLRB 107 (1969). "The Board will find an accretion 'only when the additional employees have little or no separate group identity... and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted.'" Verizon, 350 NLRB No. 53, slip op. at 28 (Aug. 9, 2007) (citations omitted).

Normally, "[a]ccretion cannot be found where 'the group sought to be accreted has been in existence at the time of recognition or certification, yet not covered in any ensuing contract.'" Id. at 28. The Board would require "recent, significant changes" in the Employer's operations that virtually obliterate the separate identity of a historically unrepresented group to justify its accretion. Lennox Industries, Inc., 308 NLRB 1237, 1238 (1992) (citing, among others, Batesville Casket Co., 283 NLRB 795, 797 (1987)).

The recent consolidation does not appear to have resulted in any recent significant changes in community-of-interest factors. There is some interchange and contact between Minnesota and Wisconsin employees, such as with the IT and maintenance employees, but that preceded consolidation. There is common supervision at the top levels of management, but that was established 10 years ago. Petitioner offered no evidence that consolidation resulted in any new interchange, or any transfers, or any changes in day-to-day supervision. Nothing changed to meld the Wisconsin side with the Minnesota side in this recent consolidation besides the corporate name on some of the paperwork.

Petitioner argues that most of the services offered by the Employer are the same or similar to services formerly offered by HRC, that most job titles and job descriptions are the same or similar, and that its unit is twice the size of the Wisconsin group. However, none of these factors came about as a result of the consolidation. Moreover, these factors do not support accretion, where there is no evidence of interchange between the Minnesota unit employees and the unrepresented Wisconsin employees; where there is no evidence of common supervision; and where there is no evidence that the work of the two groups is functionally related. In short, the consolidation did not obliterate the separate identity of the Wisconsin group. Accordingly, unit clarification to add the Wisconsin group to the Employer's unit is not appropriate.

IT IS HEREBY ORDERED that the petition for unit clarification is dismissed.[2]

Dated at Minneapolis, Minnesota, this 8th day of February, 2008.

/s/ Robert W. Chester
Robert W. Chester, Regional Director
National Labor Relations Board
Region Eighteen
330 South Second Avenue, Suite 790
Minneapolis, Minnesota 55401

[2] Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, National Labor Relations Board, 1099 - 14th Street NW, Washington D.C. 20570**. This request must be received by the Board in Washington by **February 22, 2008**.

To file a request for review electronically, go to **www.nlrb.gov** and select the E-Gov tab. Then click on the E-filing link on the menu. When the E-page opens, go to the heading Board/Office of the Executive Secretary and click the "File Documents" button under that heading. A page then appears describing the E-filing terms. At the bottom of the page, check the box next to the statement indicating that the user has read and accepts the E-File terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's original correspondence in this matter and is also located under "E-Gov" on the Board's website, **www.nlrb.gov.**